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May 13, 2024

VIA ECF

Hon. Philip M. Halpern
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: Safranek v. Wormuth, et al., No. 23 Civ. 5985 (PMH) (JCM)

Dear Judge Halpern:

Our Firm represents Plaintiff Austin Safranek, a former West Point Cadet, in the above-referenced matter.

This letter is to respectfully request that Your Honor refer this matter to Magistrate Judge McCarthy for settlement purposes in connection with the amount of attorney fees and costs to be paid to Plaintiff by the Government.

As Your Honor may recall, Mr. Safranek filed an action under the APA seeking judicial review of an adverse determination by the Army Board for the Correction of Military Records concerning his separation from the Academy and subsequent discharge from the military. The matter was remanded by Your Honor back to the ABCMR on consent of the parties, with instructions by the Court, for a new determination by the ABCMR. Plaintiff prevailed in the new determination by the ABCMR and this Court closed this matter, subject to it being reopened upon application of the parties in connection with the issue regarding the amount of money to be recovered by Plaintiff as the prevailing party in this action against the Government.

After first setting a date of May 3, 2024, by which the case may be re-opened on the issue of the award of attorney's fees (ECF-18), Your Honor extended the deadline at the request of counsel for the parties, to June 4, 2024. (ECF-20). The parties, through counsel, have been discussing the attorney fees issue. However, we now find ourselves at a point where I believe we could well benefit from a referral to Magistrate Judge McCarthy where good-faith settlement discussions could result in an amicable resolution of this issue and not require us to burden the Court to decide this issue by formal application pursuant to the EAJA.

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New Jersey

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Accordingly, I respectfully request that the Court refer this matter to Magistrate Judge McCarthy for a settlement conference to take place on such date(s) as the Magistrate Judge's calendar permits. AUSA David E. Farber, representing the Army, has advised me that he does not share my optimism that a referral to Magistrate Judge McCarthy would result in an amicable resolution of this fee issue.

Respectfully submitted,

By: /s/ Edward G. Williams
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